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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1384

BUTELL ROBINSON and DONALD ROBINSON,
Petitioners,

versus

TRANSCONTINENTAL GAS PIPELINE CORPORATION,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ALLEN POST
3300 First National Bank Tower
Atlanta, Georgia 30303
Counsel for Respondent

Of Counsel:

Albert G. Norman, Jr.
HANSELL, POST, BRANDON & DORSEY
3300 First National Bank Tower
Atlanta, Georgia 30303

W. Howard Fowler
WEBB & FOWLER
P. O. Box 27
Lawrenceville, Georgia 30245

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OPINIONS BELOW

The opinions below are correctly presented in the Petition for Certiorari (p. 2; Appendices I, II).

JURISDICTION

The petition for Certiorari (p. 2) adequately sets forth the jurisdictional requisites.

QUESTIONS PRESENTED

I. Whether the issuance of a Certificate of Public Convenience and Necessity by the Federal Power Commission was a condition precedent to the exercise by Respondent (hereinafter sometimes referred to as "Transco" or as "defendant") of eminent domain powers granted by the law of Georgia.

II. Whether Petitioner (hereinafter sometimes referred to as "plaintiff") by accepting the award of the assessors is estopped (or has waived any alleged right) to contest the validity of the condemnation proceedings instituted by the defendant.

III. Whether the plaintiff made an election of remedies by accepting the award of the assessors which bars this action.

IV. Whether a judgment of the Superior Court of Gwinnett County, Georgia, adverse to the plaintiff, is res judicata as to the claim asserted by the plaintiff in this action.

V. Whether the plaintiff is barred by laches from the relief sought.

VI. Whether the district court was prohibited by the provisions of 28 U.S.C. § 2283 from enjoining the pending appeal by the defendant from the assessors' award in the Superior Court of Gwinnett County, Georgia.

STATUTES INVOLVED

1929 Ga. Laws 219 et. seq., which is the source for the unofficial codification contained in Ga. Code Ann. Section 36-201.1 (referred to in the Petition for Certiorari, p. 3) provides in pertinent part as follows:

> "Section 1. The power of eminent domain is hereby granted to and conferred upon persons who are or may be engaged in constructing or operating pipelines for the transportation and/or distribution of natural or artificial gas for heating, lighting, and/or power purposes in the State of Georgia.
>
> ". . . .
>
> "Section 3. Be it further enacted by the authority aforesaid, that the word 'persons' as herein used

shall include individuals, partnerships, associations, and corporations, domestic or foreign, and shall include the singular as well as the plural."

28 U.S.C. § 2283 provides as follows:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

STATEMENT OF THE CASE

This is a diversity action (R. 3) in which the plaintiff seeks to enjoin the defendant from prosecuting an appeal of an award by assessors in condemnation proceedings in the Superior Court of Gwinnett County, Georgia, and to recover damages for alleged injury to plaintiff's real property. (R. 11-12) The defendant filed a motion for summary judgment based upon the pleadings, certain stipulated facts, and two affidavits which defendant served with its motion. (R. 21) Two counteraffidavits were filed by the plaintiff. The district court granted the motion. That judgment was affirmed by the Court of Appeals for the Fifth Circuit in an appeal taken by the plaintiff. The salient facts of this case, which are summarized below, are based upon the complaint and such affidavits.

Transco is a natural gas company as defined by the Natural Gas Act (15 U.S.C. § 717 et seq.), and operates and maintains a pipeline system through which it transports natural gas in interstate commerce through facilities originating in the State of Texas to consumers in Mississippi, Alabama, Georgia, New York, and intermediate states. (R. 3-4)

On or about December 23, 1964, Transco served notice

upon the plaintiff that Transco sought to condemn a right-of-way and easement over certain land of the plaintiff in Gwinnett County, Georgia, for the purpose of laying, constructing, maintaining, operating, etc. pipe lines for the transportation of natural gas. (R. 5-7; 50-57) Immediately following the statement of the interest Transco sought to condemn, the notice states that the same is "all in accord with the Statutes of the State of Georgia made and provided therefor." (R. 55)

On January 20, 1965, a majority of the three assessors, assessed the value of the property taken or used in the amount of $2,400, and awarded $8,600 as consequential damages. (R. 7-8; 42-43) Within ten days after the same was made, the award of the assessors was filed and recorded in the Office of the Clerk of the Superior Court of Gwinnett County. (R. 8; 43) Defendant's draft in the amount of the award was delivered to plaintiff and, after presentment, paid. (R. 69) Thereafter on January 26, 1965, Transco filed an appeal to the Superior Court of Gwinnett County, Georgia, as provided by Georgia law. (R. 8; 34-35)

On September 9, 1966, in proceedings before the Federal Power Commission, entitled "Transcontinental Gas Pipe Line Corporation, et al., Docket No. CP 64-270, et al.", Transco was issued a Certificate of Public Convenience and Necessity by such Commission, authorizing the construction of certain facilities in Gwinnett County, Georgia, which included the pipeline across the property of the plaintiff. (R. 8-9; 23; 59-67)

The first work upon plaintiff's property in connection with the construction of such pipeline was done by the clearing crew, which commenced on November 18, 1966 (R. 72)—some eleven months after the assessors' award and approximately five weeks after the certificate had been issued by the Federal Power Commission.

On December 1, 1966, plaintiff filed an answer in the Gwinnett Superior Court (R. 32) alleging that at the time of the condemnation, Transco did not have a Certificate of Public Convenience and Necessity as provided by the Natural Gas Act. (R. 32-33) Transco filed a demurrer and motion to strike such answer, which included the following grounds:

1. No certificate of public convenience was required in order for the condemnation to proceed. (R. 30)

2. By accepting the award of the assessors, plaintiff was estopped to contest Transco's right to condemn. (R. 26)

3. Plaintiff was barred by laches from asserting such defense. (R. 26)

4. Plaintiff could not contest Transco's right to condemn in the same proceeding. (R. 26, 29)

The Gwinnett Superior Court sustained Transco's demurrer and motion to strike" on each and every ground set forth therein." (R. 24)

On October 4, 1967, the instant action was filed in the district court. (R. 3)

SUMMARY OF ARGUMENT

I. The court of appeals decided an issue of Georgia law in accordance with the applicable law of the state and there is no contention to the contrary in the Petition for Certiorari.

II. Although a question of federal law may have been involved collaterally in the decision of the court of appeals, its decision is not in conflict with the decision of another court of appeals, nor with any decision of this Court, nor are there any other reasons to call for the exercise of this Court's power of supervision.

III. The alleged reasons for granting the writ stated in the Petition for Certiorari are totally insufficient to call for review by this Court.

IV. Although the court of appeals correctly decided the case on the grounds stated in its opinion, the decision was correct on several independent grounds, without regard to the question sought to be raised by the Petition for Certiorari.

ARGUMENT

I.

The Court of Appeals Correctly Decided an Issue of State Law.

In the condemnation proceedings in question, Transco exercised substantive eminent domain powers granted by the law of Georgia. Transco comes squarely within the provisions of the 1929 Georgia Act quoted above. It is a person (defined to include corporations, domestic or foreign) who is or may be engaged in constructing or operating pipelines for the transportation of natural gas. Neither that act nor any other provision of Georgia law imposes any conditions upon the exercise of the power. Significantly, the plaintiff has never made any constitutional attack upon the validity of the Georgia statute, nor with respect to its application under the circumstances of this case. Nor does the plaintiff contend in the Petition for Certiorari that Transco does not come within the provisions of the Georgia Act. Indeed, there is no reference at all to the Georgia statute in the plaintiff's complaint. (R. 3-12)

In affirming the judgment of the district court, the court of appeals held *per curiam* that "[t]he district court concluded in a full opinion that Transcontinental was

empowered to condemn a right of way under the applicable Georgia Condemnation Statute, Ga. Laws, 1929, p. 219, et seq., Ga. Code Annot., §36-201.1 (1969 Supp.) . . . ." (Petition for Certiorari, A. 14-15). The district court had held that "[u]nder the Georgia law, there is no express or implied requirement that a natural gas pipeline company obtain a certificate prior to instituting condemnation proceedings." (Petition for Certiorari, A. 9). The district court and the court of appeals have therefore decided what is essentially a question of Georgia law and there is no contention, nor could there be, that it was not decided in accordance with the applicable law of the state.

II.

The Decision by the Court of Appeals On Any Question of Federal Law Collaterally Involved Was Correct and Not in Conflict With the Decision of Any Other Court or Tribunal.

The thrust of the argument in the Petition for Certiorari is that a natural gas company subject to the Natural Gas Act can possess eminent domain powers only under federal law. The existence of condemnation powers under Section 7(h) of the Natural Gas Act, plaintiff contends, precludes such companies from using similar powers under state law. The only rationale for this view is that for a state to furnish authority for condemnation is "obviously what Congress never intended." (Petition for Certiorari, p. 9) In passing upon the effect of similar powers under the Federal Power Act[1] the Fourth Circuit held that:

[1] The legislative history concerning the enacting of §7(h) of the Natural Gas Act, reported in 1947 U.S. Code Cong. Serv. 1477, contains a report from the Federal Power Commission, which states that the proposed amendment to the Natural Gas Act provides for eminent domain rights similar to those provided in Section 21 of the Federal Power Act.

> "The statute, in connection with eminent domain, is too brief and leaves too many gaps. Had Congress intended this Statute as a complete statute of eminent domain, which would serve to exclude the rights of the condemnor under a state law, we are convinced that this Statute would have been far more complete and would have included many provisions which are omitted." *Oakland Club v. South Carolina Public Service Auth.*, 110 F. 2d 84, 86 (C.A. 4th, 1940).

The Natural Gas Act was approved June 21, 1938 (52 Stat. 821-833; 15 U.S.C. §§717-717w). Section 7(h) of the Act (61 Stat. 459; 15 U.S.C. §717f(h)) was not adopted until 1947. In contrast, the parallel provisions of the Federal Power Act (41 Stat. 1074; 16 U.S.C. §814) were a part of the original Federal Power Act approved June 10, 1920. (41 Stat. 1063, 16 U.S.C. §§791-823). For a period of some nine years then, the only eminent domain powers which could be exercised by natural gas companies subject to the Natural Gas Act were those created by state law. There are substantially stronger reasons therefore than were present in the analagous situation under the Federal Power Act, considered by the Fourth Circuit in *Oakland*, for concluding that Congress did not intend to abrogate existing condemnation rights under state law afforded natural gas companies when it adopted the 1947 amendment to the Natural Gas Act. Clearly, there is nothing in the decision by the Fifth Circuit which even remotely creates a conflict with the decisions of other courts of appeal.

III.

The Alleged Reasons for Granting the Writ Are Completely Insufficient.

Plaintiff's stated reasons for granting the writ are without merit. Contrary to the alleged first reason for

granting the writ, the "clear, unequivocal language of the Natural Gas Act" does not require that there be

> "'. . . in force with respect to such natural gas company a Certificate of Public Convenience and Necessity issued by the Commission authorizing such acts or operations;'

"before an interstate pipeline company is authorized to exercise the right of eminent domain." (Petition for Certiorari, p. 6.) Plainly, this is not the language of the Natural Gas Act, but an unwarranted paraphrase formulated by the plaintiff. The clear, unequivocal language of Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) requires such a certificate before a natural gas company "shall engage in the transportation or sale of natural gas . . . or undertake the construction or extension of any facilities therefor . . . ." The evidence is undisputed that Transco did not commence the construction of the facilities in question until some five weeks after the certificate had been issued by the Federal Power Commission (R. 8-9; 22-23; 59-67; 72).

The plaintiff's second stated reason (Petition for Certiorari, p. 6) is that the court of appeals has ignored the language of Section 7(h) of the Natural Gas Act (15 U.S.C. §717f(h)), which confers the right of eminent domain upon

> ". . . any holder of a Certificate of Public Convenience and Necessity . . ."

It is abundantly clear that neither the district court nor the court of appeals has ignored this language, but has recognized that the condition applies only to the exercise of the condemnation powers granted by Section 7(h) of the Natural Gas Act. The Federal Power Commission, which is vested by Congress with the primary jurisdic-

tion for administering the Natural Gas Act, has expressly held that:

> "While the condemnation powers granted to certificate holders by Section 7(h) of the Natural Gas Act operate prospectively from the date of issuance of a certificate, there is nothing in the Act to prevent a natural gas company from condemning in a different manner if so authorized by state law." *Stitt v. Manufacturers Light and Heat Co.*, 39 F.P.C. 323, 324 (1968).

Finally, plaintiff contends that the decision by the court of appeals will somehow frustrate the scheme of regulation of interstate pipeline companies established by Congress. (Petition for Certiorari, pp. 6-7) The point, which plaintiff completely ignores, is that a natural gas company cannot commence construction of facilities until it obtains a certificate from the Federal Power Commission. Should it fail to obtain a certificate authorizing it to construct the proposed facilities after condemning an easement for such purpose under state law, it cannot proceed further. Regulation will not be frustrated. The only result will be a windfall to the landowner who has received compensation for an easement which the gas company cannot use.

The cases cited by plaintiff as ostensible support for the position that a certificate from the Federal Power Commission is a condition precedent to the exercise of eminent domain powers by a natural gas company were also cited in the courts below. As aptly stated by the district court, the cases "fail to fulfill that promise." *Thatcher v. Tennessee Gas Transmission Co.*, 180 F. 2d 644 (C.A. 5th, 1950) (Petition for Certiorari, p. 7), merely upholds the constitutionality of the eminent domain powers granted natural gas companies by the

Natural Gas Act. *Sigue v. Texas Gas Transmission Corp.*, 235 F. Supp. 155 (D.C. La., 1964), aff'd 354 F. 2d 40 (C.A. 5th, 1965) (Petition for Certiorari, pp. 8-9), holds that the federal power of eminent domain under Section 7(h) of the Natural Gas Act may be enforced in a state court in accordance with state procedure. *Illinois Natural Gas Co. v. Central Illinois Public Service Co.*, 314 U.S. 498, 62 S. Ct. 384 (1942) (Petition for Certiorari, p. 9), holds that the Natural Gas Act pre-empts any authority on the part of a state commission to require an interstate pipeline company to extend its facilities and supply natural gas to a local distribution company. Similarly, *Natural Gas Pipeline Co. of America v. Illinois Commerce Commission*, 33 Ill. 2d 214, 210 N.E. 490 (1965) (Petition for Certiorari, p. 10), holds that the Natural Gas Act pre-empts regulation by a state commission of the securities of a natural gas company subject to the jurisdiction of the Federal Power Commission. *First Iowa Hydro-Electric Cooperative v. Federal Power Commission*, 328 U.S. 152, 66 S. Ct. 906 (1946) (Petition for Certiorari, p. 10), holds that the Federal Power Act pre-empts any authority on the part of a state regulatory commission to license the erection of power dams on navigable streams. *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 612, 64 S. Ct. 281, 291-92 (1944) (Petition for Certiorari, p. 11), states that under Section 7(c) of the Natural Gas Act, a natural gas company cannot undertake the construction or extension of facilities without first securing a certificate from the Federal Power Commission.

IV.

The Decision of the Court of Appeals Was Correct On Several Independent Grounds, Without Regard to the Question Sought to be Raised by the Petition for Certiorari.

A. *By Accepting the Award of the Assessors, the Plaintiff Is Estopped (and Has Waived Any Alleged Right) to Contest the Validity of the Condemnation Proceedings Instituted by Transco.*

It is undisputed that the plaintiff accepted payment of the sum awarded by the assessors before proceeding to attack Transco's power to condemn. (R. 69) The decisions of the Supreme Court of Georgia clearly establish that by thus accepting the award of the assessors, a landowner is estopped to contest the condemnor's right to condemn. The following is from *Williams v. City of LaGrange*, 213 Ga. 241, 244, 98 S.E. 2d 617, 621 (1957):

> "It has been held in several instances *(Central of Ga. Ry. Co. v. Bibb Brick Co.*, 149 Ga. 38, 99 S.E. 126; *State Highway Dept. v. H. G. Hastings Co.*, 187 Ga. 204, 297, 199 S.E. 793, 133 A.L.R. 1), that, if a property owner accepts the award made by the assessors, he is estopped. This is unquestionably correct, for obviously one can not voluntarily accept the money awarded for his property and still contest the right to condemn."

In *Winslow v. Baltimore & Ohio Railway Co.*, 208 U.S. 59, 62, 28 S. Ct. 190, 191 (1908), a pre-*Erie* decision, this Court made essentially the same holding in the following language:

> "But, by accepting the sum awarded for the land actually taken, they have lost the right to insist that the petition was not maintainable. They cannot

ratify the condemnation by receiving the appraised value of the land condemned and then ask to have the condemnation set aside and annulled; . . . ."

B. *By Accepting the Award of the Assessors, the Plaintiff Made an Election of Remedies Which Bars This Action.*

After accepting the assessors' award, the plaintiff brought this action in which he seeks not only to enjoin the condemnation proceedings in the state court, but asks the district court to go further and award damages for the taking. Plaintiff has plainly elected as his remedy the damages awarded by the assessors in the condemnation case. The following from *Towler v. State Highway Dept.*, 100 Ga. App. 374, 375, 111 S.E. 2d 154, 155 (1959), we submit, is controlling:

> "The filing of a suit independently of the condemnation proceedings and subsequently to the award of the appraisers, in which latter case the condemnee sought to obtain a general judgment for damages, did not affect the right of the condemnee to proceed to have an execution issued on the award in the manner prescribed by Code §3-604. The award could, according to Code §3-607, have been pleaded to the subsequent damage suit, since the obtaining of the valid award of the appraisers, which award was in the nature of a judgment, prevented a further suit on the same cause of action, except such proceeding as was necessary to enforce the award. The award and the proceedings to enforce it were exhaustive of the condemnee's rights in the premises, and no legal judgment could have been rendered in the same."

C. *A Judgment of the Superior Court of Gwinnett County, Georgia, Adverse to the Plaintiff, Is Res*

Judicata as to the Claim Asserted by the Plaintiff in This Action.

As pointed out previously, the plaintiff filed pleadings in the Gwinnett Superior Court contesting the right of Transco to proceed with its appeal of the assessors' award on the ground that Transco did not have a certificate from the Federal Power Commission at the time the condemnation proceedings were instituted. (R. 32-33) Transco filed a demurrer and motion to strike such pleadings, which included the following grounds:

1. No certificate of public convenience was required in order for the condemnation to proceed. (R. 30)

2. By accepting the award of the assessors, plaintiff was estopped to contest Transco's right to condemn. (R. 26)

3. Plaintiff was barred by laches from asserting such defense. (R. 26)

4. Plaintiff could not contest Transco's right to condemn in the same proceeding. (R. 26, 29)

The Gwinnett Superior Court sustained Transco's demurrer and motion to strike "on each and every ground set forth therein." (R. 24) These were clear adjudications that:

1. Plaintiff was estopped to contest Transco's right to condemn the property in question;

2. Plaintiff was barred by laches from asserting any defense in the condemnation proceedings other than the issue of value and damages;

3. There was no requirement or necessity of any certificate of public convenience and necessity in order for the condemnation by Transco to proceed.

The following is from 1B Moore, *Federal Practice* 521 ¶0.404[7]:

> "It follows . . . that in a non-federal matter where the state substantive rule has been established in state court litigation that is still pending or has been dismissed without prejudice, the state rule constitutes the law of the case in another action in the federal court involving the same matter and the same parties, or those in privity with them, unless, of course, the rule enunciated no longer represents the state law."

D. *Plaintiff Is Barred by Laches From the Relief Sought.*

On January 2, 1965, the assessors made an award to the plaintiff for the right-of-way condemned by Transco. (R. 43) Transco was issued a certificate by the Federal Power Commission on September 9, 1966, authorizing the construction of a pipeline across the plaintiff's land. (R. 8-9; 23; 59-67) On November 18, 1966, Transco entered upon the land for the first time with a clearing crew. (R. 72) Shortly before December 1, 1966, the plaintiff allegedly learned that the certificate had not been issued until September 9, 1966. (R. 8-9) On December 1, 1966, plaintiff filed pleadings in the Gwinnett Superior Court, asserting that Transco had not obtained a certificate from the Federal Power Commission at the time the condemnation proceedings were instituted. (R. 32-33) On July 11, 1967, the Gwinnett Superior Court entered an order sustaining Transco's objections to such pleadings. (R. 24)

The complaint in this action was filed on October 4, 1967, almost three months after the date of the order by the Gwinnett Superior Court (R. 3), and shows that Transco had completed construction of its pipeline and

had commenced the transmission of natural gas through the line. (R. 8)

> "A party is not entitled to an injunction when, with full knowledge of his rights, he has been guilty of delay and laches in asserting them, and has negligently suffered large expenditures to be made by another party on whom a great injury would be inflicted by the grant of the injunction." *Holt v. Parsons*, 118 Ga. 895(1), 45 S.E. 690 (1903).

In *Black v. Barnes*, 215 Ga. 827, 829, 114 S.E. 2d 38, 39 (1960), the Supreme Court of Georgia held that:

> "... the plaintiff who stood by for three months and with full knowledge of the facts allowed the defendants to complete substantial portions of the project and to expend large sums of money before he sought to enjoin the construction of the apartment, is estopped to seek to enjoin the completion of the project."

Transco's notice of condemnation was served upon the plaintiff on December 23, 1964. (R. 5) Plaintiff's pleading in the Superior Court of Gwinnett County, which attacked the condemnation proceedings on the ground that Transco did not have a Federal Power Commission certificate at the time the proceedings were instituted, was filed on December 1, 1966—*almost two years later*. There was nothing whatsoever in the notice of condemnation filed by Transco to suggest that it had a certificate from the Federal Power Commission or was purporting to do anything other than exercise eminent domain powers under Georgia law. In any event, there is nothing in the record to explain why plaintiff waited almost eighteen months (R. 75; 77) to resort to the simple expedient of writing a letter to the Federal Power Commission—or

for two years to engage an attorney to raise the issue. (R. 32-33)

E. *The District Court Was Prohibited by the Provisions of 28 U.S.C. §2283 From Enjoining the Pending Appeal Taken by the Defendant From the Assessors' Award in the Superior Court of Gwinnett County, Georgia.*

It is important to emphasize the nature of the action brought by plaintiff in the district court. Transco brought condemnation proceedings against plaintiff in Gwinnett County. The plaintiff participated in the proceedings and accepted the award of the assessors. Transco filed an appeal in the Gwinnett Superior Court in accordance with Georgia law. The plaintiff sought unsuccessfully to obtain an adjudication in the Gwinnett Superior Court that Transco did not have authority to condemn at the time the proceedings were instituted, and to dismiss the appeal. While this appeal was pending, plaintiff filed the instant action seeking to enjoin the appeal in the Superior Court and have the district court assess the damages for the taking by Transco.

In order to reach the claims for damages, the district court in any event would first have to find that the condemnation proceedings in Gwinnett County were invalid, and enjoin the appeal in the Superior Court. Under 28 U.S.C. §2283, the district court plainly may not issue such an injunction. That section provides that:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

There is no act of Congress expressly authorizing an

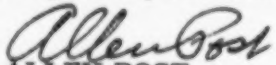
injunction in this case, and clearly an injunction is not necessary in aid of the jurisdiction of the district court or to protect or effectuate its judgments. 28 U.S.C. §2283 is a positive Congressional mandate and limitation on the equity power of district courts. This Court held in *Amalgamated Clothing Workers v. Richmond Brothers Co.*, 348 U.S. 511, 75 S. Ct. 452 (1955), that "Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation . . . ." (348 U.S. at 514)

Closely in point with the instant case is *Collins v. Laclede Gas Co.*, 237 F. 2d 633 (C.A. 8th, 1956), cert. den. 352 U.S. 1025, 77 S. Ct. 591 (1957). There the condemnee contended that the state eminent domain statute in question was unconstitutional. While the case was on appeal to the State Supreme Court, the condemnee brought an action in the federal district court to enjoin the condemnor and certain other defendants from enforcing the decree in condemnation entered by the state court. The district court concluded that "the necessary effect of granting the relief sought in the complaint . . . will be to stay proceedings in a state court" (237 F. 2d at 634), and that 28 U.S.C. §2283 prohibited the court from granting such relief. (237 F. 2d at 635-6) This decision was affirmed on appeal to the Eighth Circuit. To the same effect, see *Baber v. Texas Utilities Co.*, 228 F. 2d 665 (C.A. 5th, 1956); and *Evans v. St. Louis Housing Auth.*, 226 F. 2d 750 (C.A. 8th, 1955).

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,



ALLEN POST
Counsel for Respondent

Of Counsel:

Albert G. Norman, Jr.
HANSELL, POST, BRANDON & DORSEY
3300 First National Bank Tower
Atlanta, Georgia 30303

W. Howard Fowler
WEBB & FOWLER
P. O. Box 27
Lawrenceville, Georgia 30245

May 1, 1970

CERTIFICATE OF SERVICE

The undersigned attorney for the Respondent, hereby certifies that copies of the foregoing Brief for Respondent in Opposition to Petition for Certiorari have been served upon counsel of record for the Petitioner by depositing the same in a United States mail box, with first class postage prepaid, addressed to such counsel of record at their post office addresses, as follows:

Hosea Alexander Stephens
2334 National Bank of Georgia Building
Atlanta, Georgia 30303

Joseph E. Cheeley
Buford Commercial Bank Building
Buford, Georgia 30518

Brackett, Arnall & Stephens
2334 National Bank of Georgia Building
Atlanta, Georgia 30303

This 14th day of May, 1970.

Allen Post

ALLEN POST
Counsel for Respondent